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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD CAGLE,

Defendant and Appellant.

A149911

(Napa County
Super. Ct. No. CR137908)

Appellant Edward Cagle appeals from an order extending his period of commitment to a state mental hospital as a mentally disordered offender (MDO) pursuant to Penal Code¹ section 2972, subdivision (c). Appellant contends his recommitment hearing was fundamentally unfair due to the improper admission of substantial amounts of case-specific hearsay through an expert witness, in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). For the reasons set forth below, we dismiss the appeal as moot.

BACKGROUND

On June 14, 2016, the People filed a petition to extend appellant's civil commitment as an MDO pursuant to sections 2962 and 2970. The court held a jury trial on the petition from October 24 through October 26, 2016. The People's case consisted exclusively of the testimony of their expert witness, forensic psychologist Dia Gunnarsson, Ph.D. Dr. Gunnarsson relied on information gained from interviewing

¹ All further undesignated statutory references are to the Penal Code.

appellant, consulting with his treating psychologist, and reviewing his medical records to conclude appellant should remain committed. The jury found appellant was an MDO, and the court extended his commitment through December 12, 2017.

This timely appeal followed. On our own motion, we take judicial notice of the fact that the challenged recommitment order expired while the instant appeal has been pending. Appellant has since been subject to two subsequent recommitment orders, both of which he has appealed. (§§ 2970, 2972; see Evid. Code, §§ 452, subd. (d), 459.) On August 15, 2018, we dismissed the appeal in case No. A153259, explaining that the order extending appellant's commitment to December 11, 2018 was not subject to *Anders/Wende* review.² (See, e.g., *People v. Taylor* (2008) 160 Cal.App.4th 304, 312–313.) On October 31, 2018, appellant filed a notice of appeal in case No. A155675, challenging his current MDO commitment, which extends through December 2019. His third appeal is pending in this court.³

DISCUSSION

The Mentally Disordered Offenders Act (§ 2960 et seq.) provides for involuntary civil commitment as a condition of parole for prisoners who are found to have a “severe mental disorder” if certain conditions are met. (§ 2962, subds. (a)–(f).) The commitment is for a term of one year, and the district attorney may extend the commitment annually, for an additional year, by filing a petition. (§ 2972, subds. (c), (e).)

If this appeal had been heard and decided before the one-year timeline, we could have considered appellant's request for reversal. However, a reversal at this juncture can have no practical effect or provide appellant with effective relief. (*People v. Gregerson* (2011) 202 Cal.App.4th 306, 321 (*Gregerson*).) As indicated, the challenged

² *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende* (1979) 25 Cal.3d 436.

³ Appellate briefing in case number A155675 is not yet complete. Given the possibility of recurring mootness problems in cases involving one-year MDO commitments, appellant may wish to consider filing a motion for calendar preference pursuant to California Rules of Court, rule 8.240 when the briefing in case number A155675 is complete.

commitment expired on December 12, 2017, and since that time, appellant has been recommitted pursuant to two subsequent petitions, with the most recent commitment extending to December 2019.

It is the function of an appellate court to decide actual controversies by a judgment that can be carried into effect. It cannot render opinions on moot questions or declare principles of law that cannot affect the matter in issue in the case before it. (*Gregerson, supra*, 202 Cal.App.4th at p. 321.) When, during the pendency of an appeal, an event occurs that renders it impossible for an appellate court to grant any effective relief should it decide the case in favor of the appellant, the court will not proceed to a formal judgment but will dismiss the appeal. (*City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 958.)

However, when an appeal involves a matter of public interest and raises an issue that is likely to recur while evading appellate review, an appellate court may exercise its discretion to decide the issue for guidance in future proceedings before dismissing the appeal as moot. (*Gregerson, supra*, 202 Cal.App.4th at p. 321.) This appeal does not present such a case. (*Ibid.*) At the time of appellant's October 2016 trial, *Sanchez*, which the California Supreme Court issued in June 2016, was still relatively new law. Since that time, *Sanchez* has been addressed thoroughly in numerous appellate court opinions, thus obviating the need for this court to exercise its discretion to review the argument raised in this appeal. (See, e.g., *People v. Roa* (2017) 11 Cal.App.5th 428 [applying *Sanchez* to commitment proceedings for sexually violent predator].)

In these circumstances, we will not direct the court to hold a new hearing regarding the MDO commitment that expired on December 12, 2017. We instead find the appeal is moot. (See, e.g., *People v. Alsafar* (2017) 8 Cal.App.5th 880, 884–886 [equal protection issue moot where MDO recommitted without being required to testify].)

DISPOSITION

The appeal is dismissed as moot.

Brown, J.

We concur:

Pollak, P. J.

Streeter, J.